

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. 18-143

ASSORTED DRUG PARAPHERNALIA
VALUED AT \$29,627.07,

Defendants-in-rem.

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

Plaintiff, United States of America, brings this complaint in accordance with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action to forfeit to the United States of America items that constitutes drug paraphernalia, as that term is defined in 21 U.S.C. § 863(d), that are subject to forfeiture pursuant to 21 U.S.C. § 881(a)(10).

DEFENDANTS-*IN-REM*

2. Defendants-*in-rem* consist of the following Assorted Drug Paraphernalia valued at approximately \$29,627.07:

- a. Approximately 72 assorted bongs;
- b. Approximately 561 assorted pipes;
- c. Approximately 70 assorted marijuana grinders;
- d. Approximately 60 assorted urine cleansers;
- e. Approximately 10 assorted roach clips;

- f. Approximately 39 assorted scales;
- g. Approximately 9 assorted glass items;
- h. Approximately 4 assorted smoking masks;
- i. Approximately 11 assorted clear glass items; and
- j. Approximately 132 assorted stash containers;

(hereinafter referred to as “Defendant Drug Paraphernalia”).

3. Defendant Drug Paraphernalia was seized by the United States Drug Enforcement Administration on September 12, 2017 in the District of New Mexico.

4. Defendant Drug Paraphernalia is now, and during the pendency of this action will be, in the jurisdiction of this Court.

JURISDICTION AND VENUE

5. The United States District Court for the District of New Mexico has subject matter jurisdiction under 28 U.S.C. §§ 1345, 1355(a), and 1356.

6. Venue for this civil forfeiture action is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, as acts or omissions giving rise to the forfeiture took place in this district and Defendant Drug Paraphernalia is found in this district.

7. Upon the filing of this complaint, Defendant Drug Paraphernalia will be arrested by execution of a Warrant for Arrest *In Rem* in the District of New Mexico.

FACTS

8. Phat Glass is located at 1211 East Idaho Avenue, Las Cruces, New Mexico.

9. Jason Fernandez is the owner and operator of Phat Glass.

10. On November 18, 2016, two undercover agents entered Phat Glass and purchased two glass pipes.

11. The glass pipes purchased by undercover agents on November 18, 2016 are designed for and primarily intended for use in smoking marijuana.

12. The glass pipes purchased by undercover agents on November 18, 2016 are not traditionally used with tobacco products.

13. On August 30, 2017, two undercover agents entered Phat Glass to determine if drug paraphernalia was still being offered for sale at Phat Glass.

14. On August 30, 2017, undercover agents observed glass pipes and bongs that were displayed for sale at Phat Glass.

15. On August 30, 2017, undercover agents also observed that glass pipes were manufactured for sale at Phat Glass.

16. On September 8, 2017, United States Magistrate Judge Carmen E. Garza approved a federal search and seizure warrant authorizing the search of Phat Glass and the seizure of drug paraphernalia.

17. On September 12, 2017, federal agents from the United States Drug Enforcement Administration executed the federal search and seizure warrant at Phat Glass.

18. On September 12, 2017, Defendant Drug Paraphernalia was seized at Phat Glass.

19. Each item that is included in Defendant Drug Paraphernalia is primarily intended for use or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under Title 21 of the United States Code.

20. Each item that is included in Defendant Drug Paraphernalia is not traditionally intended for use with tobacco products.

21. On September 12, 2017, federal agents took photographs and video footage of the premises at Phat Glass prior to searching and seizing Defendant Drug Paraphernalia.

22. On September 12, 2017, one of the “Shop Policies” that was displayed at Phat Glass stated: “You cannot talk about illegal stuff! If you do we will kick your ass out!”

23. On September 12, 2017, assorted glass smoking pipes were displayed for sale at Phat Glass.

24. On September 12, 2017, bongs were displayed for sale at Phat Glass.

25. On September 12, 2017, marijuana grinders were displayed for sale at Phat Glass.

26. On September 12, 2017, roach clips were displayed for sale at Phat Glass.

27. On September 12, 2017, stash containers were displayed for sale at Phat Glass.

28. On September 12, 2017, detoxifiers were displayed for sale at Phat Glass.

29. On September 12, 2017, a number of t-shirts with depictions of marijuana leaves were displayed for sale at Phat Glass.

30. On September 12, 2017, stickers with depictions of marijuana leaves were displayed for sale at Phat Glass.

31. Prior to September 12, 2017, Phat Glass advertised its merchandise as including a large selection of custom glass pipes.

32. Prior to September 12, 2017, Jason Fernandez advertised Phat Glass as “New Mexico’s Only Smoke Shop endorsed by Tommy Chong!”

33. Tommy Chong is a popular culture icon who is widely associated with marijuana.

CLAIM FOR RELIEF

34. The United States incorporates by reference the allegations in paragraphs 1 through 33 as though fully set forth.

35. Pursuant to 21 U.S.C. § 881(a)(10), any drug paraphernalia is subject to forfeiture to the United States.

36. Pursuant to 21 U.S.C. § 881(a)(10), no property right may exist in drug paraphernalia.

37. The term “drug paraphernalia” is defined in 21 U.S.C. § 863(d).

38. The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;

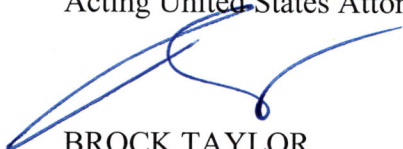
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or
- (15) cocaine freebase kits.

39. Defendant Drug Paraphernalia is drug paraphernalia, as that term is defined in 21 U.S.C. § 863(d), and it is thus subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(10).

WHEREFORE: Plaintiff seeks arrest of Defendant Drug Paraphernalia and forfeiture of same to Plaintiff, determination of the validity and priority of claims of the Claimants and any Unknown Claimants to Defendant Drug Paraphernalia, costs and expenses of seizure and of this proceeding, and other proper relief.

Respectfully submitted,

JAMES D. TIERNEY
Acting United States Attorney



BROCK TAYLOR
Assistant U.S. Attorney
200 N. Church Street
Las Cruces, NM 88001
(575) 522-2304

28 U.S.C. § 1746 DECLARATION

I am a Special Agent with the Drug Enforcement Administration. I have read the contents of the Complaint for Forfeiture *In Rem* to which this Declaration is attached. The statements contained in the complaint are true to the best of my knowledge and belief.

I declare under penalty of perjury and the laws of the United States of America that this Declaration is true and correct, except as to matters stated on information and belief, and as to those matters I believe them to be true.

Dated: 2/12/18


Amber N. Westfall, Special Agent
Drug Enforcement Administration

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brock E. Taylor

Assistant United States Attorney

200 N. Church Street, Las Cruces, NM 88001

DEFENDANTS

Assorted Drug Paraphernalia Valued at \$29,627.07

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

21 USC 881(a)(10)

Brief description of cause:
Civil Forfeiture Action**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/12/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE